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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/432,351    11/02/99    SCHRAGA    S    1.825.99

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QM32/1128

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EXAMINER

TRINH, H

MALLOY & MALLOY P A  
2800 S W THIRD AVENUE  
HISTORIC COEAL WAY  
MIAMI FL 33129

ART UNIT

PAPER NUMBER

3731

DATE MAILED: 11/28/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
09/432,351

Applicant(s)

Schraga

Examiner

VIKKI TRINH

Group Art Unit

3731



☐ Responsive to communication(s) filed on \_\_\_\_\_

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-25 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-25 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 3

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

GARY JACKSON  
PRIMARY EXAMINER  
GROUP 3300

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed 10/26/00 have been fully considered but they are not persuasive.

In the **Remarks**, applicant indicates that the restrictor assembly of the present invention differs from the one in Kim '384, because said restrictor assembly of the present invention prevents the movement of the lancet from going into the cocked orientation, thereby preventing the lancet from re-firing. (emphasis). The examiner notes that the functional language of intended use of said restrictor assembly does not structurally distinguish the present invention from the Kim reference. Furthermore, the description of said restrictor assembly having the ability to prevent re-firing of the lancet is not included anywhere in the claims of the present application. Thus, the examiner is not persuaded by applicant's argument in the **Remarks**.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

An anticipation under 35 U.S.C. 102(b) or 102(e) is established when a single prior art reference discloses, either expressly or under principles of inherency, each and every element of a claimed invention. See RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 221 USPQ 385 (Fed. Cir. 1984).

It is well settled that the law of anticipation does not require that the reference teach what appellant is teaching or has disclosed, but only that the claims on appeal "read on" something disclosed in the reference, i.e., all limitations of the claims are found in the reference. See Kalman v. Kimberly Clark Corp., 713 F.2d 760, 218 USPQ 781 (Fed. Cir. 1083). Moreover, it is not necessary for the applied reference to expressly disclose or describe a particular element or limitation of a rejected claim word for word as in the rejected claim so long as the reference inherently discloses that element or limitation. See, for example, Standard Havens Products Inc. v. Gencor Industries Inc., 953 F.2d 1360, 21 USPQ2d 1321 (Fed. Cir. 1991).

3. Claims 1-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Kim (5,707,384).

In figures 1-3c, Kim (5,707,384) discloses a lancet device having a housing 2, a lancet 8 with a piercing tip, a driving assembly 10, a restrictor assembly (unlabeled), as recited in claim 1. The device includes a biasing member/spring 10, as recited in claims 2-3. The device further includes an actuation assembly/button 12, as recited in claims 4-5. The button is secured to the

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lancet and abutted to the housing, wherein the button is at least temporarily protruded from the housing when the lancet is in a cocked orientation and the button is concealed after the lancet moves out of the cocked orientation, as broadly interpreted of claims 6-7. The device includes an abutment structure (unlabeled) with a protrusion/shoulder (unlabeled) having a slope, as recited in claims 8-13. The device includes a guide member 9, as recited in claim 14. The guide assembly has at least one guide ridge (unlabeled), as recited in claim 15. The examiner notes that the area between the reference 12 and reference 10 is the ridge location. The device includes a protective cover 14 and is protruded from the housing, as recited in claims 16-17. The above elements meet the limitations of claims 18-25.

#### *Allowable Subject Matter*

4. The indicated allowability of claim 7 is withdrawn in view of further consideration of the Kim reference.

#### *Conclusion*

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vikki Trinh whose telephone number is (703) 308-8238. The examiner can normally be reached Mon-Thurs, 7:30AM - 6:00 PM Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Buiz, can be reached at (703) 308-0871.


General inquiries relating to the status of this application should be directed to the Group receptionist at (703) 308-0858. The fax number is (703) 308-2708.



Vikki Trinh,

Patent Examiner

November 13, 2000

  
**GARY JACKSON  
PRIMARY EXAMINER  
GROUP 3300**

